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Informal assistance is also provided to persons whose duties under the Act are in question. (Cal. Code Regs., tit. 2, §18329, subd. (c).) In general, informal assistance, rather than formal written advice is provided when the requestor has questions concerning his or her duties, but no specific government decision is pending. (See Cal. Code Regs., tit. 2, §18329, subd. (b)(8)(D).)

Formal advice is identified by the file number beginning with an “A,” while informal assistance is identified by the letter “I.”

Injunction Of Proposition 208 Remains In Place At Least Through The Year 2000

Following a three-week trial in October and November 1997, the Federal District Court for the Eastern District of California issued a preliminary injunction barring further enforcement of any portion of Proposition 208. (*California ProLife Council PAC et al. vs. Scully et al.*, 989 F.Supp. 1282 (E.D.Cal. 1998).) The injunction was issued on January 6, 1998. The Fair Political Practices Commission appealed the District Court’s ruling to the Ninth Circuit Court of Appeals, which in January 1999, ordered the District Court to hold a second trial.

Shortly before trial began, the Legislature placed an initiative (Proposition 34) on the November 2000 ballot. Proposition 34 repealed most of the provisions of Proposition 208,

including all but two of the requirements at issue in the federal court challenge that led up to the 1998 injunction of Proposition 208. Recognizing this effect of Proposition 34, the federal court signed an order lifting the injunction of Proposition 208 effective January 1, 2001, the date on which Proposition 34 came into effect. As of the new year, twelve provisions of Proposition 208 became effective (principally, advertising disclosure requirements not challenged in the federal lawsuit and not repealed by Proposition 34). Two provisions of Proposition 208 which were not repealed by the new measure, but which were challenged in court (involving slate mail disclosure issues) remained under preliminary injunction. The trial court issued its final judgment on those two provisions on March 1, 2001, adjudicating the complaint of the slate mail plaintiffs and permanently enjoining Sections 84305.5 and 84503. On March 12, 2001, the Commission filed with the trial court a motion requesting that the court alter and amend its judgment to provide that the court’s judgment did not apply to Section 84305.5 as it existed prior to Proposition 208, and to further provide that Section 84503 is unconstitutional only as applied to slate mailers.

On May 8, 2001, Judge Karlton issued an order specifying that the court had only ruled on the constitutionality of § 84305.5 insofar as it was amended by Proposition 208, and had only ruled § 84503 unconstitutional as applied to slate mailers.

Campaign

David Bauer
California State Senate
Dated May 11, 2001
Our File Number: A-01-044

Senator Maurice Johannessen has asked what limits apply to a controlled committee established for a 1993 special election for purposes of raising funds to pay debts in connection with that election. Debt retirement for elections held prior to January 1, 2001, is one of many issues the Commission will address later this year. In the meantime, contributions to retire debt from the 1993 special election should be raised under the special election limits established by Proposition 73 which were in effect at the time of the election.

Raymond Nutting
El Dorado County
Dated May 31, 2001
Our File Number: I-01-096

Expenditures can be made from one campaign committee to conduct “exploratory” activity for a separate office provided the activity is truly exploratory. If the activity promotes the individual’s qualifications for the office, the person has become a “candidate” for that office and a separate bank account must be established before making the expenditures.

Conflicts of Interest

Raymond M. Paetzold
Board of Pilot Commissioners
Dated March 9, 2001
Our File Number: I-01-027

In light of changes over the years in the makeup, staffing and functions of the Board of Pilot Commissioners, it no longer meets regulatory criteria for exemption from requirement that it promulgate a conflict-of-interest code.

Heather C. McLaughlin
City of Benicia
Dated May 16, 2001
Our File Number: A-01-035

A public official has a one-third ownership interest in a business entity formed to develop an undeveloped piece of real property. The public official may not participate in hearing and deciding on appeals from the planning commission’s decisions involving the property, because they will have a reasonably foreseeable material financial effect on the business entity.

Anne K. Mester
Public Utilities Commission
Dated May 2, 2001
Our File Number: A-01-047

A public utility commission member may participate in decisions regarding rate structures for internet service providers despite having an economic interest in a company with contacts to the ISP industry.

John A. Ramirez
Huntington Beach Union High
School District
Dated May 31, 2001
Our File Number: I-01-069

A general discussion of what conduct constitutes “participating” in making a governmental decision. No specific advice.

Richard R. Rudnansky
Petaluma City Council
Dated May 22, 2001
Our File Number: A-01-075

This letter discusses the identification of economic interests for a council member who is compensated in private sector employment on a commission basis. The letter concludes the council member may participate in decisions regarding a company that supplies products to his employer that the council member in turn sells to customers.

Advice Summaries

May 2001

Karin D. Troedsson
Town of Yountville
Dated May 15, 2001
Our File Number: A-01-077

Lisa A. Foster
City of San Diego
Dated May 29, 2001
Our File Number: A-01-086

Patricia C. Bates
California State Assembly
Dated May 4, 2001
Our File Number: A-01-093

Steven L. Dorsey
Los Angeles Care Health Plan
Dated May 22, 2001
Our File Number: I-01-102

Craig A. Steele
City of San Marino
Dated May 31, 2001
Our File Number: A-01-107

Liane M. Randolph
City of Moorpark
Dated May 24, 2001
Our File Number: A-01-109

Sam Perrotti
Department of Real Estate
Dated May 21, 2001
Our File Number: I-01-110

Richard D. Jones
City of Westminster
Dated May 22, 2001
Our File Number: A-01-113

A public official with a residence located within 500 feet of the subject decision is presumed to have a conflict of interest; to determine whether the “public generally” rule applies certain information must be gathered.

A council member may participate in decisions regarding a past employer because of an exception in the definition of “sources of income” for just such a case. The letter also concludes that the council member’s participation in his prior employer’s 401(k) plan does not give rise to a conflict of interest for the official.

An Assembly member has an economic interest in a city by virtue of income received by the Assembly member’s spouse. However, the Assembly member will not have a conflict of interest in authoring legislation that affects that city’s revenue because the “public generally” exception applies.

Reviews application of the “public generally” exception for appointed members of boards and commissions to members of L.A. Care Health Plan. Discusses whether “stakeholder” members with economic interests in businesses that may be affected by the board’s decisions may participate in those decisions under Regulation 18707.4.

A city attorney is defending a lawsuit involving real property located more than a mile from his residence. The lawsuit challenges the local design review ordinance. The city attorney’s neighbor has submitted a major design review application involving real property within 500 feet of the city attorney’s residence. The fact that the neighbor has a pending design review application does not create a conflict of interest for the city attorney in defending the lawsuit involving unrelated real property, because there is no reasonably foreseeable material financial effect on the city attorney’s economic interests.

This letter applies the standard analysis in determining whether a city council member has a conflict of interest in participating in decisions and pending litigation regarding a development project 780 feet away from her residence.

A planning commissioner who is employed by the Department of Real Estate questions his eligibility on planning commission decisions where the subject subdivision is also under the jurisdiction of his employer.

A city council member may participate in council decisions to amend a general plan and change zoning where a participant in the proceeding is a campaign contributor to the council member. A reportable campaign contribution is not a source of income under the Act. There is no other “economic interest” leading to a conflict of interest under the given facts.

Advice Summaries

May 2001

Lois Coalwell
El Dorado County
Dated May 22, 2001
Our File Number: A-01-114

A public official may hear and decide upon a matter even though one of the parties to the matter is represented by an attorney who also represents the official's spouse in an unrelated matter. The public official has no economic interest in a matter to be decided based merely upon such common legal representation.

Deborah S. Acker
City of Ontario
Dated May 23, 2001
Our File Number: A-01-117

The conflict-of-interest prohibition does not apply to writing a newspaper article or speaking on the radio about a matter in which an official has a conflict of interest.

Gifts

Byron C. Smith
Vallecito Union School District
Dated May 17, 2001
Our File Number: A-01-098

An official who buys software for a public agency and enters a contest accessible to all purchasers has no reporting obligations when his entry wins the contest and he will not "receive" or "accept" the prize. The agency may accept the prize.

Honoraria

James Gilford
Alameda County Community
Development Agency
Dated May 25, 2001
Our File Number: I-00-232

Informal assistance regarding holding two positions, honoraria ban, earned income, gifts and reimbursement for travel expenses.

Prop. 34

Greg Cooper
Mountain View Professional
Firefighters PAC
Dated May 15, 2001
Our File Number: A-01-087

Section 85303 places a \$5,000 limit per contributor on contributions received by a PAC if it uses the funds to make contributions to state legislative candidates. A PAC that only contributes to city candidates is not affected by Section 85303. There are no limits on independent expenditures made by a PAC. Section 85303 does not affect a committee's fundraising or reporting obligations if the committee receives only \$10 per month from 70 contributors.

Revolving Door

Timothy W. Boyer
State Board of Equalization
Dated May 3, 2001
Our File Number: I-01-065

This letter addresses the status of tax audits and audit appeal hearings conducted by the State Board of Equalization in the context of the post-employment restrictions of Sections 87401 and 87406.

Advice Summaries

May 2001

§84308

Denis R. Bilodeau
Orange County Water District
May 11, 2001
Our File Number: A-01-104

The exemption from disclosure for “local government agencies whose members are directly elected by the voters” only applies to agencies whose entire membership consists of officers directly elected by the voters to serve on that agency. It does not apply to elected members who serve on a board that has a combination of directly elected and appointed members.